



Republic of the Philippines  
**SUPREME COURT**  
Manila

THIRD DIVISION

**G.R. No. 101762 July 6, 1993**

**VERMEN REALTY DEVELOPMENT CORPORATION**, petitioner,  
vs.  
**THE COURT OF APPEALS and SENECA HARDWARE CO., INC.**, respondents.

*Ramon P. Gutierrez for petitioner.*

*Adriano Velasco for private respondent.*

**BIDIN, J.:**

Petitioner seeks a review of the decision of the Court of Appeals in CA-G.R. CV No. 15730, which set aside the decision of the Regional Trial Court of Quezon City, Branch 92 in Civil Case No. Q-45232. The dispositive portion of the assailed decision reads as follows:

WHEREFORE, the decision *a quo* is set aside. As prayed for by plaintiff-appellant, the "Offsetting Agreement" (Exhibit "E" or "2") is hereby rescinded. Room 601 of Phase I of the Vermen Pines Condominium should be returned by plaintiff-appellant to defendant-appellee upon payment by the latter of the sum of P330,855.25 to the former, plus damages in the sum of P5,000.00 and P50.00 for the furnishings of Phase I of Condo (*sic*) Units Nos. 601 and 602, and three (3) day rental of Room 402 during the Holy Week of 1982, respectively. In addition, defendant-appellee is hereby ordered to pay plaintiff-appellant, who was compelled to litigate and hire the services of counsel to protect its interests against defendant-appellee's violation of their Offsetting Agreement, the sum of P10,000.00 as an award for attorney's fee (*sic*) and other expenses of litigation. The claim for unrealized profits in a sum equivalent to 10% to 20% percent or P522,000.00 not having been duly proved, is therefore DENIED. No costs. (*Roll*o, p. 31)

On March 2, 1981, petitioner Vermen Realty and Development Corporation, as First Party, and private respondent Seneca Hardware Co., Inc., as Second Party, entered into a contract denominated as "Offsetting Agreement". The said agreement contained the following stipulations:

1. That the FIRST PARTY is the owner/developer of VERMEN PINES CONDOMINIUM located at Bakakeng Road, Baguio City;
2. That the SECOND PARTY is in business of construction materials and other hardware items;
3. That the SECOND PARTY desires to buy from the FIRST PARTY two (2) residential condominium units, studio type, with a total floor area of 76.22 square meter (*sic*) more or less worth TWO HUNDRED SEVENTY SIX THOUSAND (P276,000.00) PESOS only;
4. That the FIRST PARTY desires to but from the SECOND PARTY construction materials mostly steel bars, electrical materials and other related items worth FIVE HUNDRED FIFTY TWO THOUSAND (P552,000.00) PESOS only;
5. That the FIRST PARTY shall pay the SECOND PARTY TWO HUNDRED SEVENTY SIX THOUSAND (P276,000.00) PESOS in cash upon delivery of said construction materials and the other TWO HUNDRED SEVENTY SIX THOUSAND (P276,000.00) PESOS shall be paid in the form of two (2) residential condominium units, studio type, with a total floor area of 76.22 square meter (*sic*) more or less also worth P276,000.00;

6. That, for every staggered delivery of construction materials, fifty percent (50%) shall be paid by the FIRST PARTY to the SECOND PARTY C.O.D. and, fifty percent (50%) shall be credited to the said condominium unit in favor of the SECOND PARTY;
7. That the SECOND PARTY shall deliver to the FIRST PARTY said construction materials under the agreed price and conditions stated in the price quotation approved by both parties and made an integral part of this document;
8. That the SECOND PARTY is obliged to start delivering to the FIRST PARTY all items in the purchase order seven (7) days from receipt of said purchase order until such time that the whole amount of P552,000.00 is settled;
9. That the place of delivery shall be Vermen Pines Condominium at Bakakeng Road, Baguio City;
10. That the freight cost of said materials shall be borne fifty percent (50%) by the FIRST PARTY and fifty percent (50%) by the SECOND PARTY;
11. That the FIRST PARTY pending completion of the VERMEN PINES CONDOMINIUM PHASE II which is the subject of this contract, shall deliver to the SECOND PARTY the possession of residential condominium, Phase I, Unit Nos. 601 and 602, studio type with a total area of 76.22 square meters or less, worth P276,000.00;
12. That after the completion of Vermen Pines Condominium Phase II, the SECOND PARTY shall be given by the FIRST PARTY the first option to transfer from Phase I to Phase II under the same price, terms and conditions. (*Rollo*, pp. 26-28).

As found by the appellate court and admitted by both parties, private respondent had paid petitioner the amount of P110,151.75, and at the same time delivered construction materials worth P219,727.00. Pending completion of Phase II of the Vermen Pines Condominiums, petitioner delivered to private respondent units 601 and 602 at Phase I of the Vermen Pines Condominiums (*Rollo*, p. 28). In 1982, the petitioner repossessed unit 602. As a consequence of the repossession, the officers of the private respondent corporation had to rent another unit for their use when they went to Baguio on April 8, 1982. On May 10, 1982, the officers of the private respondent corporation requested for a clarification of the petitioner's action of preventing them and their families from occupying condominium unit 602.

In its reply dated May 24, 1982, the petitioner corporation averred that Room 602 was leased to another tenant because private respondent corporation had not paid anything for purchase of the condominium unit. Petitioner corporation demanded payment of P27,848.25 representing the balance of the purchase price of Room 601.

In 1983, the loan application for the construction of the Vermen Pines Condominium Phase II was denied. Consequently, construction of the condominium project stopped and has not been resumed since then.

On June 21, 1985, private respondent filed a complaint with the Regional Trial Court of Quezon City (Branch 92) for rescission of the Offsetting Agreement with damages. In said complaint, private respondent alleged that petitioner Vermen Realty Corporation had stopped issuing purchase orders of construction materials after April, 1982, without valid reason, thus resulting in the stoppage of deliveries of construction materials on its (Seneca Hardware) part, in violation of the Offsetting Agreement.

In its Answer filed on August 15, 1985, petitioner alleged that the fault lay with private respondent (plaintiff therein): although petitioner issued purchase orders, it was private respondent who could not deliver the supplies ordered, alleging that they were out of stock. (However, during a hearing on January 28, 1987, the Treasurer of petitioner corporation, when asked where the purchase orders were, alleged that she was going to produce the same in court, but the same was never produced (*Rollo*, p. 30). Moreover, private respondent quoted higher prices for the construction materials which were available. Thus, petitioner had to resort to its other suppliers. Anent the query as to why Unit 602 was leased to another tenant, petitioner averred that this was done because private respondent had not paid anything for it.

As of December 16, 1986, private respondent had paid petitioner P110,151.75 in cash, made deliveries of construction materials worth P219,727.00, leaving a balance of P27,848.25 representing the purchase price of unit 601 (*Rollo*, p. 28). The price of one condominium unit was P138,000.00.

After conducting hearings, the trial court rendered a decision dismissing the complaint and ordering the plaintiff (private respondent in this petition) to pay defendant (petitioner in this petition) on its counterclaim in the amount of P27,848.25 representing the balance due on the purchase price of condominium unit 601.

On appeal, respondent court reversed the trial court's decision as adverted to above.

Petitioner now comes before us with the following assignment of errors:

## I

THE RESPONDENT COURT OF APPEALS ERRED, AND ITS ERROR IS REVIEWABLE BY THIS HONORABLE COURT, WHEN IT SUPPLANTED CONTRARY TO THE EVIDENCE ON RECORD, THE TRIAL COURT'S CONCLUSIONS THAT PETITIONER DID NOT VIOLATE THE "OFFSETTING AGREEMENT" IT ENTERED INTO WITH THE SENECA HARDWARE CO., INC. WITH ITS TOTALLY BASELESS "PERCEPTION" THAT IT WAS PETITIONER WHICH DISCONTINUED TO ISSUE PURCHASE ORDERS DUE TO THE STOPPAGE OF THE CONSTRUCTION OF PHASE II OF THE CONDOMINIUM PROJECT WHEN THE LOAN ON THE SAID PROJECT WAS STOPPED.

## II

THE RESPONDENT COURT OF APPEALS ERRED, AND ITS ERROR IS REVIEWABLE BY THIS HONORABLE COURT, WHEN IT CONCLUDED THAT IT WAS PETITIONER WHICH BREACHED THE "OFFSETTING AGREEMENT" BECAUSE IT DID NOT SEND PURCHASE ORDERS TO PRIVATE RESPONDENT AND DISCONTINUED THE CONSTRUCTION OF THE CONDOMINIUM PROJECT DESPITE THE FACT THAT THE EXHIBITS ATTESTING TO THIS FACT WAS FORMALLY OFFERED IN EVIDENCE IN COURT AND MENTIONED BY IT IN ITS DECISION.

## III

THE RESPONDENT COURT OF APPEALS ERRED, AND ITS ERROR IS REVIEWABLE BY THIS HONORABLE COURT, WHEN IT CONCLUDED THAT IT WAS PETITIONER WHICH BREACHED THE "OFFSETTING AGREEMENT" DESPITE THE ADMISSION MADE BY PRIVATE RESPONDENT'S OWN WITNESS THAT PETITIONER HAD THE DISCRETION TO ORDER OR NOT TO ORDER THE CONSTRUCTION MATERIAL (S/C) FROM THE FORMER. (*Rollo*, p. )

The issue presented before the Court is whether or not the circumstances of the case warrant rescission of the Offsetting Agreement as prayed for by Private Respondent when he instituted the case before the trial court.

We rule in favor of private respondent. There is no controversy that the provisions of the Offsetting Agreement are reciprocal in nature. Reciprocal obligations are those created or established at the same time, out of the same cause, and which results in a mutual relationship of creditor and debtor between parties. In reciprocal obligations, the performance of one is conditioned on the simultaneous fulfillment of the other obligation (*Abaya vs. Standard Vacuum Oil Co.*, 101 Phil. 1262 [1957]). Under the agreement, private respondent shall deliver to petitioner construction materials worth P552,000.00 under the conditions set forth in the Offsetting Agreement. Petitioner's obligation under the agreement is three-fold: he shall pay private respondent P276,000.00 in cash; he shall deliver possession of units 601 and 602, Phase I, Vermen Pines Condominiums (with total value of P276,000.00) to private respondent; upon completion of Vermen Pines Condominiums Phase II, private respondent shall be given option to transfer to similar units therein.

Article 1191 of the Civil Code provides the remedy of rescission in (more appropriately, the term is "resolution") in case of reciprocal obligations, where one of the obligors fails to comply with that is incumbent upon him.

The general rule is that rescission of a contract will not be permitted for a slight or causal breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in executing the agreement. The question of whether a breach of contract is substantial depends upon the attendant circumstances (*Universal Food Corp. vs. Court of Appeals*, 33 SCRA 1, [1970]).

In the case at bar, petitioner argues that it was private respondent who failed to perform its obligation in the Offsetting Agreement. It averred that contrary to the appellate court's ruling, the mere stoppage of the loan for the construction of Phase II of the Vermen Pines Condominiums should not have had any effect on the fulfillment of the obligations set forth in the Offsetting Agreement. Petitioner moreover stresses that contrary to private respondent's averments, purchase orders were sent, but there was failure to deliver the materials ordered because they were allegedly out of stock. Petitioner points out that, as admitted by private respondent's witness, petitioner had the discretion to order or not to order constructions materials, and that it was only after petitioner approved the price, after making a canvass from other suppliers, that the latter would issue a purchase order. Petitioner argues that this was the agreement, and therefore the law between the parties, hence, when no purchase orders were issued, no provision of the agreement was violated.

Private respondent, on the other hand, points out that the subject of the Offsetting Agreement is Phase II of the Vermen Pines Condominiums. It alleges that since construction of Phase II of the Vermen Pines Condominiums has failed to begin (*Rollo*, p. 104), it has reason to move for rescission of the Offsetting Agreement, as it cannot forever wait for the delivery of the condominium units to it.

It is evident from the facts of the case that private respondent did not fail to fulfill its obligation in the Offsetting Agreement. The discontinuance of delivery of construction materials to petitioner stemmed from the failure of

petitioner to send purchase orders to private respondent. The allegation that petitioner had been sending purchase orders to private respondent, which the latter could not fill, cannot be given credence. Perhaps in the beginning, it would send purchase orders to private respondent (as evidenced by the purchase orders presented in court), and the latter would deliver the construction materials ordered. However, according to private respondent, after April, 1982, petitioner stopped sending purchase orders. Petitioner failed to refute this allegation. When petitioner's witness, Treasurer of the petitioner corporation, was asked to produce the purchase orders in court, the latter promised to do so, but this was never complied with.

On the other hand, petitioner would never able to fulfill its obligation in allowing private respondent to exercise the option to transfer from Phase I to Phase II, as the construction of Phase II has ceased and the subject condominium units will never be available.

The impossibility of fulfillment of the obligation on the part of petitioner necessitates resolution of the contract for indeed, the non-fulfillment of the obligation aforementioned constitutes substantial breach of the Offsetting Agreement. The possibility of exercising the option of whether or not to transfer to condominium units in Phase II was one of the factors which were considered by private respondent when it entered into the agreement. Since the construction of the Vermen Pines Condominium Phase II has stopped, petitioner would be in no position to perform its obligation to give private respondent the option to transfer to Phase II. It would be the height of injustice to make private respondent wait for something that may never come.

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

*Feliciano, Davide, Jr., Romero and Melo, JJ., concur.*